

JUL 02 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADOLFO VALENZUELA AVILA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-73939

Agency No. A97-857-929

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges.

Adolfo Valenzuela Avila, a native and citizen of Mexico, petitions pro se
for review of the Board of Immigration Appeals' denial of his motion to reopen as

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

untimely. In the motion to reopen, petitioner sought to apply for protection under the Convention Against Torture ("CAT") following the denial of his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

Petitioner contends that his motion to reopen was timely because there is no time limit for a motion to reopen that seek relief under CAT and because he only recently became aware of government-sponsored torture in Mexico. Petitioner filed his motion to reopen outside the ninety-day time limit set forth in 8 C.F.R. § 1003.2(c)(2). In addition, petitioner failed to present material evidence of changed country conditions that was not available and could not have been presented at the previous proceeding. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *He v. Gonzales*, 501 F.3d 1128, 1131-32 (9th Cir. 2007). The BIA, therefore, did not abuse its discretion in denying the motion to reopen as untimely.

Petitioner also contends that he established a prima facie case of eligibility for CAT relief. The generalized evidence attached to his motion does not meet this standard. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216 (9th Cir. 2005).

PETITION FOR REVIEW DENIED.